The Hertz Corporation, Rent-a-Car Division and Teresa M. Canale, Petitioner and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union 961. Case 27-RD-571

December 16, 1982

## DECISION AND DIRECTION OF ELECTION

## By Chairman Van de Water and Members Jenkins and Hunter

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Michael J. Belo on October 13, 1981. Following the hearing and pursuant to Section 102.67(h) of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Regional Director for Region 27 transferred this case to the National Labor Relations Board for decision. Thereafter, the Union filed a brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. The rulings are hereby affirmed.

Upon the entire record in this case, including the Union's brief, the Board finds:

- 1. The Employer is a Delaware corporation engaged in renting automobiles. During the course of its business operations in Colorado, it annually purchases and receives materials and equipment valued in excess of \$50,000 directly from points outside the State of Colorado, and, therefore, is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
- 2. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union 961, herein called the Union, is a labor organization within the meaning of the Act, which claims to represent certain employees of the Employer. The Petitioner, an employee of the Employer, asserts that the Union, which has been previously recognized by the Employer as the bargaining representative of the employees involved herein, is no longer such representative as defined in Section 9(a) of the Act.
- 3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

The Employer and the Union entered into a collective-bargaining agreement for a 3-year period effective February 1, 1978, to February 1, 1981. On November 13, 1978, however, the parties executed a modification of the existing contract, including amended wage rates, a new provision pertaining to part-time and seasonal employees, and an expiration date of November 13, 1981.

In December 1980, pursuant to the termination provisions of the February 1, 1978, agreement, the Union notified the Employer of its intention to negotiate a new contract. Negotiations began with both parties operating under the mistaken assumption that the contract expired on February 1, 1981. The Employer realized the error, brought it to the Union's attention, and expressed its willingness either to negotiate a new contract or to resume bargaining later in the year, prior to the November 13, 1981, expiration date. The Union decided to continue bargaining. Shortly thereafter, the parties agreed on a new contract to be effective from February 1, 1981, to November 13, 1984, subject to unit ratification.

Sometime on or about February 9, 1981, the Union held a meeting of bargaining unit employees to advise them that they had the option of continuing under the existing contract until November, when it expired, or of ratifying the new contract. The employees voted to accept the new contract. It was executed on February 9, 1981, and made effective from February 1, 1981.

The Petitioner filed the instant decertification petition on September 9, 1981. The Union contends that the February 1, 1981, collective-bargaining agreement barred the petition, even though it is undisputed that the petition was filed within the 90to-60-day period preceding the expiration date of the November 13, 1978, extension agreement. Its contention is based on the premise that the contract executed on February 9, 1981, completely superseded the extension agreement, so that the expiration date of November 13, 1981, no longer had any significance. The Union takes the position that employees had two opportunities to file petitions shortly before the parties executed the new contract and failed to take advantage of either one. The first opportunity was 90 to 60 days prior to the expiration of the original contract, November 3 to December 3, 1980. The second period, it claims, was between the expiration of that contract on February 1, 1981, and the execution of the existing one on February 9, 1981. Since employees did not elect to exercise their right to petition within the two appropriate time periods, the Union argues, they are barred from doing so during the first 3 years of the existing contract.

The cornerstone of the Union's position is that the expiration date of the extension agreement, November 13, 1981, was rendered meaningless for contract-bar purposes by the new agreement which was executed on February 9, 1981. We reject this contention.

In Deluxe Metal Furniture Company, the Board defined a prematurely extended contract as follows:

[A] contract will . . . be considered prematurely extended if during its term the contracting parties execute an amendment thereto or a new contract which contains a later terminal date than that of the existing contract, except when executed (1) during the 60-day insulated period preceding the terminal date of the old contract; (2) after the terminal date of the old contract if notice by one of the parties forestalled its automatic renewal . . . provision; or (3) at a time when the existing contract would not have barred an election because of other contract-bar rules.

The premature extension doctrine, as set forth in *Deluxe Metal*, and modified by *Leonard Wholesale Meats*, *Inc.*,<sup>2</sup> states that a prematurely extended contract will not bar an election if the petition is filed over 60 but not more than 90 days before the terminal date of the original contract. If the original contract is one of unreasonable duration,<sup>3</sup> the Board noted in *Union Carbide Corporation*,<sup>4</sup> the 90-to-60-day "open" period is measured from the third anniversary date rather than the expiration date designated in the contract.

In Union Carbide, a petition was filed within the 90-to-60-day period prior to the expiration date of the original contract, but after the third anniversary date of that contract had passed. Thus, had the original contract not been extended, the petition would not have been barred. However, because the original contract was prematurely extended, and because it was in effect at the time the petition was filed, the Board found that the petition could not be entertained. It held that a new contract, or an amendment to a contract, could not be rendered inoperative as a bar, simply because the parties had prematurely extended another agreement.

The Union does not dispute that the November 13, 1978, modification agreement constituted a premature extension of the February 1, 1978, contract. It therefore asserts, and correctly so, that this contract could not have barred any petition filed 90 to

60 days before February 1, 1981, the date the original contract would have expired, but for the premature extension.<sup>5</sup> The Union maintains, however, that no petitions could be filed during the 90-to-60-day period prior to November 13, 1981, the terminal date of the modification agreement, because of the contract-bar effect of the new February 1, 1981, contract which was then in force.

The Union's rationale for disregarding the "open" period petitioners normally would expect to occur prior to the expiration of a collective-bargaining agreement is that the agreement that went into effect on February 1, 1981, was a completely new contract.6 This may very well be the case. Nevertheless, the fact remains that (1) the new contract was executed at a time when the November 13, 1978, modification agreement was still in effect; (2) the new contract contained a later termination date than the modification agreement; and (3) the new contract did not fall under any of the exceptions to the premature extension definition set forth in Deluxe Metal. Thus, it is evident that the February 1, 1981, contract prematurely extended the November 13, 1978, modification agreement.

The Board adopted its contract-bar policies, including the premature extension doctrine, to enable it to fulfill its obligation under the Act to provide employees with the opportunity to select, reject, or change their representation status at reasonable and predictable intervals, while at the same time allowing it to foster successful collective-bargaining relationships by providing a degree of contract stability. To facilitate this approach, the Board provides that election petitions may be filed only at specified times during the life of the collective-bargaining agreement. Since the designated filing period is necessarily a function of the duration dates set forth in the contract, it is axiomatic that such dates must be ones on which anyone seeking an election can reasonably rely. In 1978, the parties agreed to

<sup>&</sup>lt;sup>1</sup> 121 NLRB 995, 1001 (1958).

<sup># 136</sup> NLRB 1000 (1962).

<sup>&</sup>lt;sup>8</sup> The Board considers collective-bargaining agreements for periods of more than 3 years to be contracts of unreasonable duration. *General Cable Corporation*, 139 NLRB 1123 (1962).

<sup>4 190</sup> NLRB 191 (1971).

<sup>&</sup>lt;sup>6</sup> The Union's contention that employees could have filed petitions between February 1 and 9, 1981, however, is incorrect. Its argument overlooks the contract-bar effect of the November 13, 1978, modification agreement, which was still in effect at that time.

<sup>&</sup>lt;sup>8</sup> The Union's contention essentially is that a new contract executed during the term of an extension agreement, but after the "open" period of the original contract, bars the filing of petitions during the 90-to-60-day period preceding the expiration date set forth in the extension agreement. Were this the case, which it is not, parties could, contrary to our longstanding policy, succeed in barring petitions for unreasonable periods of time. See General Cable, supra. For example, parties could prematurely extend their original contract 2 years beyond its designated expiration date. If no petition is filed during the "open" period under the original contract, they could wait I year and then execute a new 3-year contract. Under Union Carbide, supra, petitions filed during the first year of the extension period would be barred. In addition, under the Union's analysis, petitions filed during the 3-year term of the new contract, which would overlay what would have been the second and final year of the extension period, would also be barred. Therefore, the two contracts together would bar petitions for 4 years, an unreasonable period of time.

modify their existing collective-bargaining agreement and, in so doing, extended the expiration date of their contract to November 13, 1981, 3 years from the execution date of the extension. By executing this extension memorandum, the parties effectively gave notice to employees, and any other party not signatory to the contract who may have desired an election, that petitions could be filed in 1981, during the 90-to-60-day open period calculated from the date of the memorandum's expiration on November 13, 1981. To foreclose such an open period would result in the parties to the new contract capitalizing on a contract that was prematurely extended and on which parties such as the Petitioner here relied in considering when to file a

timely petition. In such circumstances, we would find a second open period not only appropriate, but necessary. Accordingly, as the instant petition was filed on September 9, 1981, within 90 to 60 days of the stated expiration date of the modified contract, we find that the petition is not barred.

4. The parties agreed, and we find, that the following unit is appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All courtesy bus drivers employed by the Employer at 7600 E. 32nd Avenue, Denver, Colorado; excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act, and all other employees.

[Direction of Election and Excelsior footnote omitted from publication.]

<sup>&</sup>lt;sup>7</sup> This, of course, did not abrogate or in any way affect the open period created by the original contract.